



July 2, 2002

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2002-3593

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165193.

The Texas Department of Criminal Justice (the "department") received a request for copies of ten documents completed for each applicant for a specified position, including a copy of the test that was given to each applicant. You state that a portion of the responsive information will be released to the requestor. However, you claim that the requested test questions, their recommended answers, and certain personal information are excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982).

You state that you sought clarification from the requestor as to the type or nature of the documents being requested. See Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-day deadline for requesting a decision

from this office was tolled only during that time that the department was awaiting a response to its clarification request. *See* Open Records Decision No. 663 at 5 (1999). The request was received by the department on April 10, 2002. On April 22, 2002, you asked for clarification regarding the request for information. You state that on April 30, 2002, you received clarification from the requestor; consequently, the ten day period resumed on April 30. You submitted your request for a decision from this office on April 30, 2002. Accordingly, we conclude that you timely requested a decision from this office pursuant to section 552.301 of the Government Code.

Section 552.117(3) of the Government Code requires that the department withhold the home address and telephone number, social security number, and family member information of department employees. You state that "any and all such information on the responsive documents, except the social security number of the requestor, is excepted from release pursuant to Section 552.117." We note, however, that there is no section 552.117 information in the submitted documents. Therefore, we conclude that section 552.117 is inapplicable to the submitted information.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

You contend that the submitted interview questions are excepted from disclosure under section 552.122(b). You state that the "questions measure the knowledge or ability of an applicant" and that the release of the questions and model answers would "compromise the effectiveness of future examinations." Having considered your arguments and reviewed the submitted information, we agree that questions 1, 2, and 4 constitute "test items" as contemplated by section 552.122(b). We also find that the recommended responses to these questions may reveal the questions themselves. Accordingly, the department may withhold interview questions 1, 2, and 4 and their respective preferred answers pursuant to section 552.122(b) of the Government Code. However, you have not demonstrated that interview questions 3 and 5, along with their preferred answers, satisfy the section 552.122 criteria. Therefore, these questions and answers must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Montgomery Meitler". The signature is fluid and cursive, with the first name "W." and last name "Meitler" clearly distinguishable.

W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 165193

Enc: Submitted documents

c: Ms. Susan M. Howard  
4075 Enchanted Sun  
San Antonio, Texas 78220  
(w/o enclosures)